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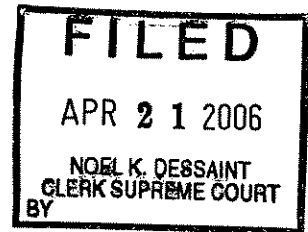
APR 21 2006

CLERK SUPREME COURT

SUPREME COURT OF ARIZONA  
No. R-06-0003

SUA SPONTE PETITION PURSUANT TO  
RULE 28, RULES OF THE SUPREME COURT

EMERGENCY ADOPTION REQUIRED



**Requested by:**

Supreme Court of Arizona  
Staff Attorneys' Office

**Date:**

April 21, 2006

**Rule Numbers:**

Rules 28 and 124, Rules of the Supreme Court  
Rule 83, Arizona Rules of Civil Procedure  
Rule 36, Arizona Rules of Criminal Procedure

**Subject:**

The proposal would amend Rules 28 and 124, Rules of the Supreme Court, to permit Rule 28 petitions and comments pertaining thereto, to be electronically filed.

Amendments to Rule 83, Arizona Rules of Civil Procedure, and Rule 36, Arizona Rules of Criminal Procedure, would also allow local rule amendments to be filed electronically, using the procedures of Rule 28. A new sentence added to Civil Rule 83 provides that a local rule petition may, but need not be, circulated for comment, in the discretion of the Court. Criminal Rule 36 is deleted and amended to conform to Rule 83. The current criminal rule appears to require approval of a local rule amendment by the whole court, whereas the civil rule requires only approval of the Chief Justice.

This proposal is required to be adopted on an emergency basis to permit electronic filing to be implemented by May 1, 2006.

## ATTACHMENT A

### RULES OF THE SUPREME COURT

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#### **Rule 28. Procedure for Adoption, Amendment or Repeal of Rules**

##### **Preamble**

It is the policy of the Arizona Supreme Court to establish an effective process for the adoption, amendment, and repeal of rules of procedure for the courts of this state which will provide for public notice and opportunity for comment from the members of the legal profession and the public on proposals to adopt, amend, or repeal rules, utilizing available technology. To carry out this policy, the court has established appropriate procedures, an interactive court rules website, and an annual rule-making cycle to implement its constitutional authority under Article 6, Section 5 of the Arizona Constitution, as hereinafter set forth.

##### **(A) Petition for Adoption, Amendment, or Repeal of Rule; Deadline for Filing.**

(1) Any person, association or public agency interested in the adoption, amendment, or repeal of a court rule may file ~~with the Clerk of the Supreme Court~~ a petition to adopt, amend, or repeal a rule. Such petition shall be filed on or before November 1 in any given year in order to be considered and acted upon by the court at its annual rules conference the following September. Any such filing. A written paper petition shall be filed with the Clerk of the Supreme Court and shall consist of an original and six (6) copies, in addition to one copy of the petition and supporting documentation in Microsoft Word format on a CD, disk, or other compatible electronic medium format. Alternatively, a petition may be filed electronically by submitting the petition in both PDF and Microsoft Word format on the Court Rules Forum website, as provided by Administrative Order No. 2006- . If the petition is electronically filed, the PDF version shall be considered the official record. The petition shall state the grounds for the adoption, amendment or repeal of the rule, include a draft of the proposed new or amended rule, and may be accompanied by supporting documentation. The petition and supporting documentation shall not exceed 20 pages, exclusive of pages containing a draft of the proposed new or amended rule. The form, method of preparation, and filing of the petition and supporting documentation shall substantially conform, insofar as practicable, to the requirements of Rule 6(c), ARCAP.

(2) After the filing of a petition, the court shall review ~~clerk shall deliver the petition and any accompanying papers supporting documentation to the court for~~

~~review and determination of~~ determine whether to open the matter ~~the petition should be circulated for public comment, referred it to an appropriate committee for further study and report, or rejected it for lack of need, merit, or substance.~~

(3) If the court denies the petition for lack of need, merit, or substance, the clerk shall promptly ~~mail notice to~~ notify the petitioner of the decision of the court ~~to the petitioner~~. If the court refers the petition to a committee for study and report, the clerk shall ~~give written notice to~~ notify the petitioner of the referral and shall include the name and address of the chairperson of the committee. The petitioner shall be entitled to submit written comment, either on paper or electronically, and appear before the committee. Notices shall be mailed or sent electronically, in accordance with Administrative Order No. 2006- and Rule 124 of these rules.

**(B) Proposed Rule Changes by the Supreme Court.** The court, on its own motion, may propose the adoption, amendment, or repeal of a rule. The proposed rule change, together with any documentation, shall be filed with the clerk, who may, at the direction of the court, shall thereafter circulate the draft of the rule change ~~open the matter for comment~~ in the manner provided in Rule 28(C).

**(C) Circulation of Opening the Rule Change Petition for Rule Change Comment.** Whenever ~~the circulation of a~~ petition for a rule change is required by the court or by these rules to be opened for comment, the clerk shall prepare and ~~attach to each copy of the petition a request for comment which shall state~~ stating that the court invites written comment on the merits of the petition, indicate and indicating the place for filing such comments and the expiration date for filing such comments. Such comments may be filed on paper with the clerk, or may be filed electronically, as specified in paragraph (D) of this rule. Copies of the petition and the request for comment shall be sent by the clerk, on or before December 20 of each year, by mail or electronically, or as otherwise directed by the court, to the following:

- Governor, State of Arizona
- Speaker, Arizona House of Representatives
- President, Arizona State Senate
- Attorney General of Arizona
- Director of the Arizona Legislative Council
- Dean, Arizona State University Law School
- Dean, University of Arizona Law School
- Administrative Director of the Courts
- Clerk, Court of Appeals, Division One
- Clerk, Court of Appeals, Division Two
- Each Superior Court Presiding Judge
- Each Chief Judge of the Court of Appeals
- Executive Director of the State Bar
- President of the Justice of the Peace Association
- President of the Municipal Judges Association

President of the Arizona Attorneys for Criminal Justice  
Executive Director of the Arizona Prosecuting Attorneys Advisory Council  
Executive Director of the Victim's Services Division, Office of the Attorney General of Arizona  
Chairperson of the Arizona Coalition for Victim Services  
Presidents of all Organized Local Bar Associations  
President of the Superior Court Clerk's Association  
Executive Director of the Arizona Trial Lawyers Association  
Executive Director of the Phoenix Association of Defense Counsel  
President of the Tucson Defense Bar Association  
Editor, Arizona Attorney (State Bar)  
Editor, Maricopa Lawyer  
Editor, The Writ (Pima Bar Association)  
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County Law Libraries

In addition, the clerk shall send copies of the petition and request for comment to such other persons or organizations as may be designated by the court. ~~The clerk shall also~~ and provide copies of the petition and request for comment to the members of the news media. The court shall also make copies of the petition and request for comment available on its ~~the~~ Court Rules Forum website.

**(D) Comment on Proposed Rule Changes; Reply to Comments;**

**Deadlines.** The form and method of preparation of written paper comments concerning the merits of a petition for rule change shall substantially conform, insofar as practicable, to the requirements of Rule 6(c), ARCAP, and shall not exceed 20 pages. ~~The court may also deem it advisable to provide by separate administrative order for the electronic filing of comments. In any case, eComments shall be filed, in either traditional paper format or electronic format, as provided by Administrative Order No. 2006-\_\_\_\_, with the clerk on or before May 20 of each year, unless a different date is specified in the request for comments. Any such filing of a A paper comment shall be filed with the clerk and shall consist of an original and six copies, in addition to one copy of the written comments and any supporting documentation in Microsoft Word format on a CD, disk, or other compatible electronic format medium. Alternatively, a comment may be filed electronically either by submitting the comment in both PDF and Microsoft Word format on the Court Rules Forum website, or by submitting an informal comment in the manner indicated on the Court Rules Forum website, as provided by Administrative Order No. 2006-\_\_\_\_. If the comment is electronically filed, the PDF version, if any, shall be considered the official record. A copy of the comment shall be served upon the petitioner, which service may be made by electronic means if the petition was filed electronically. The petitioner shall have until June 30, or if an expiration date other than May 20 is specified, 30 days after the expiration of the comment period, to reply to any comments. After the expiration of the time allowed for~~

comment and reply, the clerk shall submit to the court the comments and replies that have been filed.

**(E) Request for Public Hearing.** At any time prior to the expiration of the time allowed for comment on a petition for rule change, the court, on its own motion or at the request of the petitioner or any interested person or organization, may order that a public hearing be held on the proposed rule change. The court shall determine the method and manner of holding such hearing or hearings. The hearing may be conducted before the court en banc, or before one or more members of the court assigned to conduct the hearing, before a master appointed to conduct the hearing or before a committee designated by the court.

**(F) Consideration of Rule Change by the Court; Effective Date of Rules; Notice.**

(1) In September of each year, after the time for public comment has expired and after the conclusion of any public hearings, the court shall consider the matters presented and shall act upon the proposed rule by adopting, modifying or repealing it, or by refusing to adopt, modify or repeal it.

(2) Unless another effective date is set forth in the court's order, all new rules and amendments that the court adopts in September shall be effective as of January 1 following the date of the court's action.

(3) The clerk shall notify send notice of the action taken by the court to the petitioner, and those persons and organizations listed in Rule 28(C), and to those persons and organizations who submitted comment on the petition for rule change of the action taken by the court. Notices shall be mailed or sent electronically, in accordance with the Administrative Order No. 2006- and Rule 124 of these rules.

**(G) Emergency or Expedited Adoption of Rule.**

(1) If a rule change petition presents an urgent matter for which compelling circumstances render the annual rule processing cycle inadequate, a request to consider a rule change petition on an expedited basis may be filed with the petition.

(2) If the court determines that immediate action is necessary for the adoption or amendment of a rule, the court shall take the action required by the circumstances. Any rule adopted by the court pursuant to this section shall be circulated by the clerk opened for public comment in the manner provided in Rule 28(C), and comment may be made in the manner provided in Rule 28(D).

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## **Rule 124. Electronic Filing, Delivery and Service of Documents**

**(a) Electronic Filing Authorized.** In accordance with this rule and the corresponding Administrative Requirements for Electronic Filing and Management of Court Documents adopted concurrently herewith, the chief justice and the chief judge of each division of the court of appeals may permit by appropriate court rule or administrative order the electronic filing of documents in their respective courts. The presiding judge of the superior court in each county may permit by appropriate court rule the electronic filing of documents in the superior court and justice courts in each county. After consultation with the governing body of the city or town in which a municipal court is located, the presiding judge of the superior court may permit by appropriate court rule the electronic filing of documents in municipal court.

**(b) Implementation of Electronic Filing.** [No change in text.]

**(c) Date and Effect of Electronic Filing.** [No change in text.]

**(d) Electronic Delivery of Documents by the Court.** [No change in text.]

**(e) Electronic Service of Documents by Parties.** [No change in text.]

**(f) Paragraph Numbering.** [No change in text.]

**(g) Computation of Time.** [No change in text.]

## **ARIZONA RULES OF CIVIL PROCEDURE**

### **Rule 83. Local Rules by Superior Courts**

With the approval of a majority of the judges of the county, the presiding judge shall supplement these rules by local rules, not inconsistent with the provisions of these Rules, which shall be promulgated and published upon approval of the Chief Justice of the Supreme Court. The presiding judge may file the petition for the Chief Justice's approval of the proposed rule change either in traditional paper format or electronically, as provided in Administrative Order No. 2006-\_\_\_\_\_, relating to rule matters under Rule 28, Rules of the Supreme Court. A petition filed pursuant to this rule need not, but may in the discretion of the Supreme Court, be circulated for public comment.

## ARIZONA RULES OF CRIMINAL PROCEDURE

### Rule 36. Local Rules

~~Any court may make and amend rules governing its practice not inconsistent with these rules. No such rule shall become effective until approved in writing by the Supreme Court. With the approval of a majority of the judges of the county, the presiding judge shall supplement these rules by local rules, not inconsistent with the provisions of these rules, which shall be promulgated and published upon approval of the Chief Justice of the Supreme Court. The presiding judge may file the petition for the Chief Justice's approval of the proposed rule change either in traditional paper format or electronically, as provided in Administrative Order No. 2006- , relating to rule matters under Rule 28, Rules of the Supreme Court. A petition filed pursuant to this rule need not, but may in the discretion of the Supreme Court, be circulated for public comment.~~